

# COMMITTEE REPORT

## MR. PRESIDENT:

**The Senate Committee on Judiciary, to which was referred House Bill No. 1202, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 2, line 32, after "or" insert "**Class**".
- 2       Page 3, delete lines 11 through 19.
- 3       Page 8, delete lines 21 through 42.
- 4       Delete page 9.
- 5       Page 10, delete lines 1 through 26, begin a new paragraph and
- 6       insert:
- 7       "SECTION 9. IC 34-13-2-3 IS AMENDED TO READ AS
- 8       FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A judgment
- 9       rendered with respect to or a settlement made by a governmental entity
- 10      bars an action by the claimant against an employee whose conduct gave
- 11      rise to the claim resulting in that judgment or settlement.
- 12      (b) The governmental entity shall pay any judgment, compromise,
- 13      or settlement of a claim or suit against an employee when:
- 14          (1) the act or omission causing the loss is within the scope of the
- 15          employee's employment; and
- 16          (2) the:
- 17              (A) governor, in the case of a claim or suit against a state
- 18              employee; or
- 19              (B) the governing body of the political subdivision, in the case

1 of a claim or suit against an employee of a political  
2 subdivision;

3 determines that paying the ~~judgment~~, compromise or settlement  
4 is in the best interest of the governmental entity.

5 (c) The governmental entity shall pay all costs and fees incurred by  
6 or on behalf of an employee in defense of a claim or suit for a loss  
7 occurring because of acts or omissions within the scope of the  
8 employee's employment, regardless of whether the employee can or  
9 cannot be held personally liable for the loss.

10 (d) This chapter shall not be construed as:

11 (1) a waiver of the eleventh amendment to the Constitution of the  
12 United States;

13 (2) consent by the state of Indiana or its employees to be sued in  
14 any federal court; or

15 (3) consent to be sued in any state court beyond the boundaries of  
16 Indiana.

17 SECTION 10. IC 34-13-3-3, AS AMENDED BY P.L.250-2001,  
18 SECTION 6, AND AS AMENDED BY P.L.280-2001, SECTION 42,  
19 IS AMENDED AND CORRECTED TO READ AS FOLLOWS  
20 [EFFECTIVE JULY 1, 2002]: Sec. 3. A governmental entity or an  
21 employee acting within the scope of the employee's employment is not  
22 liable if a loss results from *the following*:

23 (1) The natural condition of unimproved property.

24 (2) The condition of a reservoir, dam, canal, conduit, drain, or  
25 similar structure when used by a person for a purpose that is not  
26 foreseeable.

27 (3) The temporary condition of a public thoroughfare *or extreme*  
28 *sport area* that results from weather.

29 (4) The condition of an unpaved road, trail, or footpath, the  
30 purpose of which is to provide access to a recreation or scenic  
31 area.

32 (5) *The design, construction, control, operation, or normal*  
33 *condition of an extreme sport area, if all entrances to the extreme*  
34 *sport area are marked with:*

35 (A) *a set of rules governing the use of the extreme sport area;*

36 (B) *a warning concerning the hazards and dangers associated*  
37 *with the use of the extreme sport area; and*

38 (C) *a statement that the extreme sport area may be used only*

- 1           *by persons operating extreme sport equipment.*  
 2           *This subdivision shall not be construed to relieve a governmental*  
 3           *entity from liability for the continuing duty to maintain extreme*  
 4           *sports areas in a reasonably safe condition.*  
 5           (6) The initiation of a judicial or an administrative proceeding.  
 6           ~~(6)~~ (7) The performance of a discretionary function; however, the  
 7           provision of medical or optical care as provided in IC 34-6-2-38  
 8           shall be considered as a ministerial act.  
 9           ~~(7)~~ (8) The adoption and enforcement of or failure to adopt or  
 10          enforce a law (including rules and regulations), unless the act of  
 11          enforcement constitutes false arrest or false imprisonment.  
 12          ~~(8)~~ (9) An act or omission performed in good faith and without  
 13          malice under the apparent authority of a statute which is invalid  
 14          if the employee would not have been liable had the statute been  
 15          valid.  
 16          ~~(9)~~ (10) The act or omission of anyone other than the  
 17          governmental entity or the governmental entity's employee.  
 18          ~~(10)~~ (11) The issuance, denial, suspension, or revocation of, or  
 19          failure or refusal to issue, deny, suspend, or revoke, any permit,  
 20          license, certificate, approval, order, or similar authorization,  
 21          where the authority is discretionary under the law.  
 22          ~~(11)~~ (12) Failure to make an inspection, or making an inadequate  
 23          or negligent inspection, of any property, other than the property  
 24          of a governmental entity, to determine whether the property  
 25          complied with or violates any law or contains a hazard to health  
 26          or safety.  
 27          ~~(12)~~ (13) Entry upon any property where the entry is expressly or  
 28          impliedly authorized by law.  
 29          ~~(13)~~ (14) Misrepresentation if unintentional.  
 30          ~~(14)~~ (15) Theft by another person of money in the employee's  
 31          official custody, unless the loss was sustained because of the  
 32          employee's own negligent or wrongful act or omission.  
 33          ~~(15)~~ (16) Injury to the property of a person under the jurisdiction  
 34          and control of the department of correction if the person has not  
 35          exhausted the administrative remedies and procedures provided  
 36          by section 7 of this chapter.  
 37          ~~(16)~~ (17) Injury to the person or property of a person under  
 38          supervision of a governmental entity and who is:

- 1 (A) on probation; or
  - 2 (B) assigned to an alcohol and drug services program under
  - 3 IC 12-23, a minimum security release program under
  - 4 IC 11-10-8, **a pretrial conditional release program under**
  - 5 **IC 35-33-8**, or a community corrections program under
  - 6 IC 11-12.
- 7 ~~(17)~~ (18) Design of a highway (as defined in IC 9-13-2-73) if the
- 8 claimed loss occurs at least twenty (20) years after the public
- 9 highway was designed or substantially redesigned; except that
- 10 this subdivision shall not be construed to relieve a responsible
- 11 governmental entity from the continuing duty to provide and
- 12 maintain public highways in a reasonably safe condition.
- 13 ~~(18)~~ (19) Development, adoption, implementation, operation,
- 14 maintenance, or use of an enhanced emergency communication
- 15 system.
- 16 ~~(19)~~ (20) Injury to a student or a student's property by an
- 17 employee of a school corporation if the employee is acting
- 18 reasonably under a discipline policy adopted under
- 19 IC 20-8.1-5.1-7(b). ~~or~~
- 20 ~~(20)~~ (21) An error resulting from or caused by a failure to
- 21 recognize the year 1999, 2000, or a subsequent year, including an
- 22 incorrect date or incorrect mechanical or electronic interpretation
- 23 of a date, that is produced, calculated, or generated by:
- 24 (A) a computer;
  - 25 (B) an information system; or
  - 26 (C) equipment using microchips;
- 27 that is owned or operated by a governmental entity. However, this
- 28 subdivision does not apply to acts or omissions amounting to
- 29 gross negligence, willful or wanton misconduct, or intentional
- 30 misconduct. For purposes of this subdivision, evidence of gross
- 31 negligence may be established by a party by showing failure of a
- 32 governmental entity to undertake an effort to review, analyze,
- 33 remediate, and test its electronic information systems or by
- 34 showing failure of a governmental entity to abate, upon notice, an
- 35 electronic information system error that caused damage or loss.
- 36 However, *this* subdivision ~~(20)~~ expires ~~on~~ June 30, 2003. ~~or~~
- 37 ~~(21)~~ (22) *An act or omission performed in good faith under the*
- 38 *apparent authority of a court order described in IC 35-46-1-15.1*

1       *that is invalid, including an arrest or imprisonment related to the*  
 2       *enforcement of the court order, if the governmental entity or*  
 3       *employee would not have been liable had the court order been*  
 4       *valid."*

5       Page 11, line 8, after "employment" strike "must be exclusive to the  
 6       complaint and".

7       Page 11, line 27, after "when" insert ";".

8       Page 11, line 28, reset in roman "(1)".

9       Page 11, line 30, delete "." and insert ";".

10      Page 11, line 30, reset in roman "and".

11      Page 11, reset in roman lines 31 through 35.

12      Page 11, line 36, reset in roman "determines that paying the".

13      Page 11, line 36, reset in roman "compromise".

14      Page 11, line 36, after "compromise" delete ",".

15      Page 11, line 36, reset in roman "or settlement".

16      Page 11, reset in roman line 37.

17      Page 12, between lines 7 and 8, begin a new paragraph and insert:

18      "SECTION 10. IC 34-13-4-1, AS AMENDED BY P.L.192-2001,  
 19      SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20      JULY 1, 2002]: Sec. 1. If a present or former public employee,  
 21      including a member of a board, a committee, a commission, an  
 22      authority, or another instrumentality of a governmental entity, is or  
 23      could be subject to personal civil liability for a loss occurring because  
 24      of a noncriminal act or omission within the scope of the public  
 25      employee's employment which violates the civil rights laws of the  
 26      United States, the governmental entity shall, subject to IC 34-13-3-4,  
 27      IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay any judgment,  
 28      compromise, or settlement of the claim or suit when:

29           (1) the governor, in the case of a claim or suit against a state  
 30           employee; or

31           (2) the governing body of the political subdivision, in the case of  
 32           a claim or suit against an employee of a political subdivision;

33      determines that paying the ~~judgment~~, compromise or settlement is in  
 34      the best interest of the governmental entity. The governmental entity  
 35      shall also pay all costs and fees incurred by or on behalf of a public  
 36      employee in defense of the claim or suit."

37      Page 13, delete lines 7 through 16.

38      Renumber all SECTIONS consecutively.

(Reference is to HB 1202 as reprinted February 5, 2002.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 0.

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**Bray**

**Chairperson**